

January 20, 1999

OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON  
850 Union Bank of California Building  
900 Fourth Avenue  
Seattle, Washington 98164  
Telephone (206) 296-4660

DECISION ON APPEAL OF DETERMINATION  
OF ENVIRONMENTAL NON-SIGNIFICANCE

SUBJECT: Department of Development and Environmental Services File No. **B98C0242**

**WESTERN WIRELESS**  
Appeal of SEPA Threshold Determination

Location: 16922 NE 122nd Street

Property Owner: **Dave Kern**  
16922 NE 122<sup>nd</sup> Street  
Redmond, WA 98052

Applicant: Western Wireless, *represented by* **Kollin Min & Brian Knox**  
Attorneys At Law, Preston, Gates & Ellis  
701 Fifth Avenue #5000  
Seattle, WA 98104-7078

Appellants: **Tom Glaister** **Robert & Peggy Gering**  
17002 NE 122nd Street 16923 NE 122nd Street  
Redmond, WA 98052 Redmond, WA 98052

**Rod Ingersoll & Pat Walker**  
16905 NE 122nd Street  
Redmond, WA 98052

King County: Department of Development & Environmental Services  
Land Use Services Division, *represented by* **Paul Wozniak**  
900 Oakesdale Avenue SW, Renton, WA 98055

SUMMARY OF DECISION:

Department's Preliminary:	Deny the appeal
Department's Final:	Deny the appeal
Examiner:	Deny the appeal

PRELIMINARY MATTERS:

Notice of appeal received by Examiner:	November 2, 1998
Statement of appeal received by Examiner:	November 2, 1998

## EXAMINER PROCEEDINGS:

Pre-Hearing Conference:	December 3, 1998
Pre-Hearing Order:	December 7, 1998
Supplemental Order:	December 23, 1998
Hearing Opened:	January 12, 1999
Hearing Closed:	January 12, 1999

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

## ISSUES ADDRESSED:

- telecommunications antennas
- visual impact
- jurisdiction

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

## FINDINGS:

## 1. General Information:

Location:	16922 NE 122nd Street	
Applicant:	Western Wireless, <i>represented by</i> Kollin Min and Brian Knox Attorneys At Law, Preston, Gates & Ellis 701 Fifth Avenue #5000, Seattle, WA 98104-7078	
Appellants:	Tom Glaister 17002 NE 122nd Street Redmond, WA 98052	Robert & Peggy Gering 16923 NE 122nd Street Redmond, WA 98052
	Rod Ingersoll & Pat Walker 16905 NE 122nd Street Redmond, WA 98052	
STR:	NE SW 25-26-05	
Zoning:	R-8SO	
Project:	Remove an existing Puget Sound Energy pole, install a 100-foot pole with a telecommunications unicast antenna and existing power lines, and install a cement pad with supporting electronic equipment.	
Community Plan:	Northshore	
Drainage Sub-basin:	Sammamish River	

2. The property subject to this proceeding is located at 16922 Northeast 122<sup>nd</sup> Street in King County, Washington. The owner of the subject property is Dave Kern, whose address is 16922 Northeast 122<sup>nd</sup> Street, Redmond, and Washington 98052.

The project proponent is Western Wireless.

3. The proposal subject to review is: removal of an existing Puget Sound Energy pole, approximately 40 feet in height, which is used to carry electric transmission lines at an elevation of approximately 30 feet; positioning a 100-foot wood pole at the same location, to support a 6-foot antenna and the existing Puget Sound Energy power lines at the 30-foot elevation; and installing a cement pad north of the pole, on which will be located electronic equipment necessary for operation of the proposed antenna.
4. The action under consideration is issuance of a commercial building permit for the Western Wireless proposal. On October 2, 1998, the King County Department of Development and Environmental Services issued a determination of environmental non-significance for the proposed action. This determination was appealed on October 16, 1998. On December 7, 1998, a pre-hearing order limited the issues to be considered on appeal to the visual impacts of the proposal (including cumulative visual impacts of this and other similar proposals in the vicinity).
5. The environmental check-list submitted by Western Wireless had proposed a 100-foot tall steel-gray monopole. The DDES evaluation of the check-list indicated that the Applicant would use a wood pole as mitigation of visual impacts. Subsequent to the issuance of the determination of non-significance, DDES received from the Applicant a photosimulation showing a wood pole at the subject site, and the Applicant testified that this mitigation is incorporated into its proposal. There is no indication in the record as to why a determination of non-significance was issued, rather than a mitigated determination of non-significance which reflects the mitigation proposed by the Applicant.
6. Although the King County Hearing Examiner has jurisdiction to consider the appeal of the determination of environmental non-significance, the Examiner does not have jurisdiction to consider action to be taken by DDES on the underlying application for a commercial building permit. In particular, the question of whether the proposal is a permitted use in the zone is outside of the Examiner's jurisdiction. KCC 20.20.020, Exhibit A, footnote "\*\*\*\*\*".

#### CONCLUSIONS:

1. It is undisputed that the Applicant's original proposal has been modified to provide for installation of a wood pole, rather than the steel gray pole originally proposed, in order to mitigate visual impact of the proposed development. The determination of environmental non-significance should reflect that modification to the proposal.
2. Giving substantial weight to the determination by the Department of Development and Environmental Services that the proposed action will not have a probable significant adverse impact upon the environment, the evidence does not demonstrate that the lead agency was clearly erroneous in determining that the installation of a 100-foot wood pole with a six-foot antenna, together with the ancillary electronic equipment, either alone or considered together with other similar structures in the vicinity, would have a probable significant adverse visual impact which requires the preparation of an environmental impact statement.

3. If a commercial building permit is issued by DDES for the proposed development, the issue as to whether the proposal is a permitted use authorized by KCC 21A.26.400 can not be appealed to the King County Hearing Examiner, but would be subject to judicial review.

#### DECISION:

The determination of environmental non-significance issued by King County on October 2, 1998 is modified to a mitigated determination of non-significance, subject to the condition that the pole to be installed at the site be a wood pole.

ORDERED this 20<sup>th</sup> day of January, 1999.

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James N. O'Connor  
King County Hearing Examiner

TRANSMITTED this 20<sup>th</sup> day of January, 1999, to the parties and interested persons listed below.

Kenji & Junko Akagi	Tom Glaister	Roger & Shelly Thorn
Bradley & Holly Baker	Rod Ingersoll & Pat Walker	Carrie Tibbetts
Sam & Lucinda Beechner	Dave Kern	
Steve & Betty Bordner	Kollin Min	Greg Borba
Robert & Debbie Dezotell	Tim & Dede Shilling	Kim Claussen
Tim & Christy Federspiel	Lorraine Spencer	Tracy Daniels
Robert & Peggy Gering	Howard & Sharen Stoll	Paul Wozniak

#### MINUTES OF THE JANUARY 12, 1999 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. B98C0242 – WESTERN WIRELESS:

James N. O'Connor was the Hearing Examiner in this matter. Participating at the hearing were Paul Wozniak, Lorraine Spencer, Kollin Min, Pat Walker, Rod Ingersoll, Thomas Glaister, Kenji Akagi, Sharen Stoll, Steve Bordner, Robert Dezotell, and Brian K. Knox.

The following exhibits were offered and entered into the hearing record:

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|----------------|--|
| Exhibit No. 1  | Department of Development and Environmental Services, Land Use Services Division, Report to the Hearing Examiner |
| Exhibit No. 2  | Determination of Nonsignificance for B98C9242 (E98E0168) issued October 2, 1998                                  |
| Exhibit No. 3  | Environmental Checklist dated August 27, 1998  |
| Exhibit No. 4  | Appeal of DNS received October 16, 1998  |
| Exhibit No. 5  | Complete set of plans for project dated August 20, 1998  |
| Exhibit No. 6  | Appellants' hearing notebook   |
| Exhibit No. 7  | Photograph of Notice of Proposed Land Use Action   |
| Exhibit No. 8  | Omitted  |
| Exhibit No. 9  | Omitted  |
| Exhibit No. 10 | SEPA file  |

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